

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JOSE MAURICIO MORAN-MIRANDA,  
AKA Joses Moran Miranda,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 17-70025

Agency No. A029-184-024

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted November 15, 2022\*\*

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Jose Mauricio Moran-Miranda, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") denial of his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.<sup>1</sup>

The agency did not abuse its discretion in denying Moran-Miranda’s motion to reopen as untimely, where it was filed over two years after the final removal order, *see* 8 U.S.C. § 1229a(c)(7)(C)(i) (motion to reopen must be filed within ninety days of the final removal order), and Moran-Miranda has not established changed country conditions in El Salvador to qualify for an exception to the filing deadline, *see* 8 U.S.C. § 1229a(c)(7)(C)(ii); *Toufighi v. Mukasey*, 538 F.3d 988, 996-97 (9th Cir. 2008) (movant must produce material evidence that conditions in country of nationality had changed); *see also Najmabadi*, 597 F.3d at 987-90 (evidence must be “qualitatively different” to warrant reopening). We reject as unsupported by the record Moran-Miranda’s contentions that the agency failed to correctly consider the evidence or otherwise erred in analyzing his claim.

As to sua sponte reopening, the BIA did not err in determining that the IJ lacked jurisdiction to consider Moran-Miranda’s request for a waiver of inadmissibility. *See Man v. Barr*, 940 F.3d 1354, 1357 (9th Cir. 2019)

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<sup>1</sup> We grant the motion for leave to file an out-of-time amici curiae brief (Docket Entry No. 26).

(“Immigration Judges lack the authority to consider a request by a petitioner for U nonimmigrant status for a waiver under section 212(d)(3)(A)(ii) of the [Immigration and Nationality] Act.” (citing *Matter of Khan*, 26 I & N Dec. 797, 803 (BIA 2016) (internal quotation marks omitted)). We otherwise lack jurisdiction to review the agency’s discretionary decision not to reopen proceedings sua sponte. *See Bonilla v. Lynch*, 840 F.3d 575, 588 (9th Cir. 2016) (“[T]his court has jurisdiction to review Board decisions denying *sua sponte* reopening for the limited purpose of reviewing the reasoning behind the decision for legal or constitutional error.”).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**